

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: October 22, 2003

TO : Robert H. Miller, Regional Director
Region 20

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Spherion, Inc. 512-5009-1500
Case 20-CA-31369-1

This Section 8(a)(1) and (4) case, involving the Employer's statements concerning seeking sanctions if the Charging Party supervisor did not withdraw his nonmeritorious unfair labor practice charge, was submitted for advice as to whether the statements constituted unlawful threats. We agree with the Region that the statements did not rise to the level of coercive threats, and that the charge should be dismissed, absent withdrawal.

Briefly, Charging Party Edwards, whose job title was supervisor, filed a charge on May 28, 2003, in Case 20-CA-31287 alleging that he had been unlawfully discharged for engaging in protected concerted activity. On June 17, the Employer's attorney left a message on Edwards' answering machine to find out if Edwards had sought to dismiss the charge, which stated further that if not, the attorney was "going to go ahead and contact the [Board] today and inform them of your position and, um, seek appropriate sanctions." After Edwards returned her call with a message the next day, the Employer attorney left another message stating "you're clearly a supervisor within the meaning of the Act and therefore you are not covered by the Act ... if you are going to continue to proceed with this charge, then I'll just go ahead and file what I have to with the NLRB and get it dismissed."

On June 20, Edwards called the attorney, who told him she thought Edwards' charge was "frivolous" because she would be able to prove that Edwards knew he was bringing his charge without merit because he knew he was a supervisor. When Edwards asked what would be included in the "sanctions" she would be seeking, the attorney said that if the charge were to be found frivolous and Edwards was given sanctions, Edwards could or would have to pay the Employer's legal fees and costs for responding to the charge. The attorney has told the Region that she thought the Board had provisions

for an action against a charging party if he or she filed a blatantly frivolous charge.

When the Region told Edwards that it had determined that he was a supervisor whose discharge was not covered by the Act, Edwards withdrew the charge. On July 8, the same date on which that withdrawal request was approved, Edwards filed the instant charge alleging that the Employer's threats of sanctions violated Section 8(a)(1) and (4).

We agree with the Region that the Employer attorney's statements to Edwards did not constitute coercive threats. Those statements concerning seeking appropriate sanctions, later clarified to seeking legal fees and costs "if [Edwards'] charge was found to be frivolous," were statements of the Employer's legal position conditioned on a finding that the charge was frivolous, and arose in the context of the Employer's response to the processing of a nonmeritorious charge initiated by Edwards. They were not threats to initiate a separate proceeding against Edwards. In these circumstances, the statements of possible legal ramifications of Edwards' charge under Board procedure were not coercive within the meaning of the Act.

B.J.K.